



General Assembly

February Session, 2008

***Raised Bill No. 383***

LCO No. 1888

\*01888\_\_\_\_\_AGE\*

Referred to Committee on Select Committee on Aging

Introduced by:  
(AGE)

***AN ACT CONCERNING A NURSING HOME BILL OF RIGHTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-550 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) (1) As used in this section, (A) "nursing home facility" shall have  
4 the same meaning as provided in section 19a-521, and (B) "chronic  
5 disease hospital" means a long-term hospital having facilities, medical  
6 staff and all necessary personnel for the diagnosis, care and treatment  
7 of chronic diseases; and (2) for the purposes of subsections (c) and (d)  
8 of this section, and subsection (b) of section 19a-537, "medically  
9 contraindicated" means a comprehensive evaluation of the impact of a  
10 potential room transfer on the patient's physical, mental and  
11 psychosocial well-being, which determines that the transfer would  
12 cause new symptoms or exacerbate present symptoms beyond a  
13 reasonable adjustment period resulting in a prolonged or significant  
14 negative outcome that could not be ameliorated through care plan  
15 intervention, as documented by a physician in a patient's medical  
16 record.

17 (b) There is established a patients' bill of rights for any person  
18 admitted as a patient to any nursing home facility or chronic disease  
19 hospital. The patients' bill of rights shall be implemented in accordance  
20 with the provisions of Sections 1919(b), 1919(c), 1919(c)(2),  
21 1919(c)(2)(D) and 1919(c)(2)(E) of the Social Security Act. The patients'  
22 bill of rights shall provide that each such patient: (1) Is fully informed,  
23 as evidenced by the patient's written acknowledgment, prior to or at  
24 the time of admission and during the patient's stay, of the rights set  
25 forth in this section and of all rules and regulations governing patient  
26 conduct and responsibilities; (2) is fully informed, prior to or at the  
27 time of admission and during the patient's stay, of services available in  
28 the facility, and of related charges including any charges for services  
29 not covered under Titles XVIII or XIX of the Social Security Act, or not  
30 covered by basic per diem rate; (3) is entitled to choose the patient's  
31 own physician and is fully informed, by a physician, of the patient's  
32 medical condition unless medically contraindicated, as documented by  
33 the physician in the patient's medical record, and is afforded the  
34 opportunity to participate in the planning of the patient's medical  
35 treatment and to refuse to participate in experimental research; (4) in a  
36 residential care home or a chronic disease hospital is transferred from  
37 one room to another within the facility only for medical reasons, or for  
38 the patient's welfare or that of other patients, as documented in the  
39 patient's medical record and such record shall include documentation  
40 of action taken to minimize any disruptive effects of such transfer,  
41 except a patient who is a Medicaid recipient may be transferred from a  
42 private room to a nonprivate room, provided no patient may be  
43 involuntarily transferred from one room to another within the facility  
44 if (A) it is medically established that the move will subject the patient  
45 to a reasonable likelihood of serious physical injury or harm, or (B) the  
46 patient has a prior established medical history of psychiatric problems  
47 and there is psychiatric testimony that as a consequence of the  
48 proposed move there will be exacerbation of the psychiatric problem  
49 which would last over a significant period of time and require  
50 psychiatric intervention; and in the case of an involuntary transfer

51 from one room to another within the facility, the patient and, if known,  
52 the patient's legally liable relative, guardian or conservator or a person  
53 designated by the patient in accordance with section 1-56r, is given at  
54 least thirty days' and no more than sixty days' written notice to ensure  
55 orderly transfer from one room to another within the facility, except  
56 where the health, safety or welfare of other patients is endangered or  
57 where immediate transfer from one room to another within the facility  
58 is necessitated by urgent medical need of the patient or where a patient  
59 has resided in the facility for less than thirty days, in which case notice  
60 shall be given as many days before the transfer as practicable; (5) is  
61 encouraged and assisted, throughout the patient's period of stay, to  
62 exercise the patient's rights as a patient and as a citizen, and to this  
63 end, has the right to be fully informed about patients' rights by state or  
64 federally funded patient advocacy programs, and may voice  
65 grievances and recommend changes in policies and services to facility  
66 staff or to outside representatives of the patient's choice, free from  
67 restraint, interference, coercion, discrimination or reprisal; (6) shall  
68 have prompt efforts made by the facility to resolve grievances the  
69 patient may have, including those with respect to the behavior of other  
70 patients; (7) may manage the patient's personal financial affairs, and is  
71 given a quarterly accounting of financial transactions made on the  
72 patient's behalf; (8) is free from mental and physical abuse, corporal  
73 punishment, involuntary seclusion and any physical or chemical  
74 restraints imposed for purposes of discipline or convenience and not  
75 required to treat the patient's medical symptoms. Physical or chemical  
76 restraints may be imposed only to ensure the physical safety of the  
77 patient or other patients and only upon the written order of a  
78 physician that specifies the type of restraint and the duration and  
79 circumstances under which the restraints are to be used, except in  
80 emergencies until a specific order can be obtained; (9) is assured  
81 confidential treatment of the patient's personal and medical records,  
82 and may approve or refuse their release to any individual outside the  
83 facility, except in case of the patient's transfer to another health care  
84 institution or as required by law or third-party payment contract; (10)

85 receives quality care and services with reasonable accommodation of  
86 individual needs and preferences, except where the health or safety of  
87 the individual would be endangered, and is treated with  
88 consideration, respect, and full recognition of the patient's dignity and  
89 individuality, including privacy in treatment and in care for the  
90 patient's personal needs; (11) is not required to perform services for the  
91 facility that are not included for therapeutic purposes in the patient's  
92 plan of care; (12) may associate and communicate privately with  
93 persons of the patient's choice, including other patients, send and  
94 receive the patient's personal mail unopened and make and receive  
95 telephone calls privately, unless medically contraindicated, as  
96 documented by the patient's physician in the patient's medical record,  
97 and receives adequate notice before the patient's room or roommate in  
98 the facility is changed; (13) is entitled to organize and participate in  
99 patient groups in the facility and to participate in social, religious and  
100 community activities that do not interfere with the rights of other  
101 patients, unless medically contraindicated, as documented by the  
102 patient's physician in the patient's medical records; (14) may retain and  
103 use the patient's personal clothing and possessions unless to do so  
104 would infringe upon rights of other patients or unless medically  
105 contraindicated, as documented by the patient's physician in the  
106 patient's medical record; (15) is assured privacy for visits by the  
107 patient's spouse or a person designated by the patient in accordance  
108 with section 1-56r and, if the patient is married and both the patient  
109 and the patient's spouse are inpatients in the facility, they are  
110 permitted to share a room, unless medically contraindicated, as  
111 documented by the attending physician in the medical record; (16) is  
112 fully informed of the availability of and may examine all current state,  
113 local and federal inspection reports and plans of correction; (17) may  
114 organize, maintain and participate in a patient-run resident council, as  
115 a means of fostering communication among residents and between  
116 residents and staff, encouraging resident independence and  
117 addressing the basic rights of nursing home and chronic disease  
118 hospital patients and residents, free from administrative interference

119 or reprisal; (18) is entitled to the opinion of two physicians concerning  
120 the need for surgery, except in an emergency situation, prior to such  
121 surgery being performed; (19) is entitled to have the patient's family or  
122 a person designated by the patient in accordance with section 1-56r  
123 meet in the facility with the families of other patients in the facility to  
124 the extent the facility has existing meeting space available which meets  
125 applicable building and fire codes; (20) is entitled to file a complaint  
126 with the Department of Social Services and the Department of Public  
127 Health regarding patient abuse, neglect or misappropriation of patient  
128 property; (21) is entitled to have psychopharmacologic drugs  
129 administered only on orders of a physician and only as part of a  
130 written plan of care developed in accordance with Section 1919(b)(2) of  
131 the Social Security Act and designed to eliminate or modify the  
132 symptoms for which the drugs are prescribed and only if, at least  
133 annually, an independent external consultant reviews the  
134 appropriateness of the drug plan; (22) is entitled to be transferred or  
135 discharged from the facility only pursuant to section 19a-535 or section  
136 19a-535b of the 2008 supplement to the general statutes, as applicable;  
137 (23) is entitled to be treated equally with other patients with regard to  
138 transfer, discharge and the provision of all services regardless of the  
139 source of payment; (24) shall not be required to waive any rights to  
140 benefits under Medicare or Medicaid or to give oral or written  
141 assurance that the patient is not eligible for, or will not apply for  
142 benefits under Medicare or Medicaid; (25) is entitled to be provided  
143 information by the facility as to how to apply for Medicare or  
144 Medicaid benefits and how to receive refunds for previous payments  
145 covered by such benefits; (26) on or after October 1, [1990] 2008, shall  
146 not be required to [give a third party guarantee of] bind or obligate a  
147 third party for payment to the facility [as a condition of] in connection  
148 with the admission to, or continued stay in, the facility; (27) in the case  
149 of an individual who is entitled to medical assistance, is entitled to  
150 have the facility not charge, solicit, accept or receive, in addition to any  
151 amount otherwise required to be paid under Medicaid, any gift,  
152 money, donation or other consideration as a precondition of admission

153 or expediting the admission of the individual to the facility or as a  
154 requirement for the individual's continued stay in the facility; and (28)  
155 shall not be required to deposit the patient's personal funds in the  
156 facility.

157 (c) The patients' bill of rights shall provide that a patient in a rest  
158 home with nursing supervision or a chronic and convalescent nursing  
159 home may be transferred from one room to another within a facility  
160 only for the purpose of promoting the patient's well-being, except as  
161 provided pursuant to subparagraph (C) or (D) of this subsection or  
162 subsection (d) of this section. Whenever a patient is to be transferred,  
163 the facility shall effect the transfer with the least disruption to the  
164 patient and shall assess, monitor and adjust care as needed subsequent  
165 to the transfer in accordance with subdivision (10) of subsection (b) of  
166 this section. When a transfer is initiated by the facility and the patient  
167 does not consent to the transfer, the facility shall establish a  
168 consultative process that includes the participation of the attending  
169 physician, a registered nurse with responsibility for the patient and  
170 other appropriate staff in disciplines as determined by the patient's  
171 needs, and the participation of the patient, the patient's family, a  
172 person designated by the patient in accordance with section 1-56r or  
173 other representative. The consultative process shall determine: (1)  
174 What caused consideration of the transfer; (2) whether the cause can be  
175 removed; and (3) if not, whether the facility has attempted alternatives  
176 to transfer. The patient shall be informed of the risks and benefits of  
177 the transfer and of any alternatives. If subsequent to the completion of  
178 the consultative process a patient still does not wish to be transferred,  
179 the patient may be transferred without the patient's consent, unless  
180 medically contraindicated, only (A) if necessary to accomplish physical  
181 plant repairs or renovations that otherwise could not be accomplished;  
182 provided, if practicable, the patient, if the patient wishes, shall be  
183 returned to the patient's room when the repairs or renovations are  
184 completed; (B) due to irreconcilable incompatibility between or among  
185 roommates, which is actually or potentially harmful to the well-being  
186 of a patient; (C) if the facility has two vacancies available for patients of

187 the same sex in different rooms, there is no applicant of that sex  
188 pending admission in accordance with the requirements of section 19a-  
189 533 and grouping of patients by the same sex in the same room would  
190 allow admission of patients of the opposite sex, which otherwise  
191 would not be possible; (D) if necessary to allow access to specialized  
192 medical equipment no longer needed by the patient and needed by  
193 another patient; or (E) if the patient no longer needs the specialized  
194 services or programming that is the focus of the area of the facility in  
195 which the patient is located. In the case of an involuntary transfer, the  
196 facility shall, subsequent to completion of the consultative process,  
197 provide the patient and the patient's legally liable relative, guardian or  
198 conservator if any or other responsible party if known, with at least  
199 fifteen days' written notice of the transfer, which shall include the  
200 reason for the transfer, the location to which the patient is being  
201 transferred, and the name, address and telephone number of the  
202 regional long-term care ombudsman, except that in the case of a  
203 transfer pursuant to subparagraph (A) of this subsection at least thirty  
204 days' notice shall be provided. Notwithstanding the provisions of this  
205 subsection, a patient may be involuntarily transferred immediately  
206 from one room to another within a facility to protect the patient or  
207 others from physical harm, to control the spread of an infectious  
208 disease, to respond to a physical plant or environmental emergency  
209 that threatens the patient's health or safety or to respond to a situation  
210 that presents a patient with an immediate danger of death or serious  
211 physical harm. In such a case, disruption of patients shall be  
212 minimized; the required notice shall be provided within twenty-four  
213 hours after the transfer; if practicable, the patient, if the patient wishes,  
214 shall be returned to the patient's room when the threat to health or  
215 safety which prompted the transfer has been eliminated; and, in the  
216 case of a transfer effected to protect a patient or others from physical  
217 harm, the consultative process shall be established on the next business  
218 day.

219 (d) Notwithstanding the provisions of subsection (c) of this section,  
220 unless medically contraindicated, a patient who is a Medicaid recipient

221 may be transferred from a private to a nonprivate room. In the case of  
 222 such a transfer, the facility shall (1) give at least thirty days' written  
 223 notice to the patient and the patient's legally liable relative, guardian  
 224 or conservator, if any, a person designated by the patient in accordance  
 225 with section 1-56r or other responsible party, if known, which notice  
 226 shall include the reason for the transfer, the location to which the  
 227 patient is being transferred and the name, address and telephone  
 228 number of the regional long-term care ombudsman; and (2) establish a  
 229 consultative process to effect the transfer with the least disruption to  
 230 the patient and assess, monitor and adjust care as needed subsequent  
 231 to the transfer in accordance with subdivision (10) of subsection (b) of  
 232 this section. The consultative process shall include the participation of  
 233 the attending physician, a registered nurse with responsibility for the  
 234 patient and other appropriate staff in disciplines as determined by the  
 235 patient's needs, and the participation of the patient, the patient's  
 236 family, a person designated by the patient in accordance with section  
 237 1-56r or other representative.

238 (e) [Any facility that negligently deprives a patient of any right or  
 239 benefit created or established for the well-being of the patient by the  
 240 provisions of this section shall be liable to such patient in a private  
 241 cause of action for injuries suffered as a result of such deprivation.  
 242 Upon a finding that a patient has been deprived of such a right or  
 243 benefit, and that the patient has been injured as a result of such  
 244 deprivation, damages shall be assessed in the amount sufficient to  
 245 compensate such patient for such injury.] The rights or benefits  
 246 specified in subsections (b), (c) and (d) of this section are inalienable  
 247 and may not be reduced, rescinded or abrogated by contract. Any  
 248 facility that fails to comply with any provision of this section with  
 249 respect to any patient shall be liable to such patient in a private cause  
 250 of action for damages in an amount equal to the sum of (1) any actual  
 251 damage sustained by such patient as a result of such failure, (2) such  
 252 additional damages as the court may allow, not to exceed one  
 253 thousand dollars, and (3) in the case of any successful cause of action  
 254 to enforce liability under the provisions of this section, the costs of the



255 action and reasonable attorney's fees as determined by the court. In  
256 addition, where the [deprivation of any such right or benefit] failure is  
257 found to have been wilful or in reckless disregard of the rights of the  
258 patient, punitive damages may be assessed. A patient may also  
259 maintain an action pursuant to this section for any other type of relief,  
260 including injunctive and declaratory relief, permitted by law.  
261 Exhaustion of any available administrative remedies shall not be  
262 required prior to commencement of suit under this section.

263 (f) In addition to the rights specified in subsections (b), (c) and (d) of  
264 this section, a patient in a nursing home facility is entitled to have the  
265 facility manage the patient's funds as provided in section 19a-551.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2008	19a-550
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**Statement of Purpose:**

To provide greater legal protection for patients in nursing homes.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*